

WATKINS HUTCHESON BUILDING CO., INC.

IBLA 81-163

Decided April 17, 1981

Appeal from decision of the Eastern States Office, Bureau of Land Management, rejecting application for sale or release of mineral rights. ES 25532.

Affirmed.

1. Applications and Entries: Generally--Federal Land Policy and Management Act of 1976: Sales

BLM properly rejects an application to purchase mineral rights where the record shows that these rights were previously sold to a private party. In the absence of any proof to the contrary, it is presumed that the sale of these interests was regularly consummated by the issuance of a deed or other appropriate instrument of conveyance to the private party.

APPEARANCES: Richard W. Watkins, Jr., Esq., Jackson, Georgia, for appellant.

OPINION BY ADMINISTRATIVE JUDGE STUEBING

On September 29, 1980, Watkins Hutcheson Building Company, Inc. (Watkins), filed a letter requesting that the Eastern States Office, Bureau of Land Management (BLM), release or sell to it allegedly Federally-owned mineral interests in a 1-acre lot which was once part of a 78.47-acre parcel located in Butts County, Georgia. While Watkins did not so specify, we presume that the application was made pursuant to section 209 of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1719 (1976). Watkins' application indicated that one Walter Banks had received title to this 78.47-acre parcel on October 1, 1943, by deed from the Farm Security Administration, U.S. Department of Agriculture (USDA), but that the grant was subject to a reservation of 75 percent of the mineral rights by the United States. Watkins added that it had purchased the 1-acre lot from Banks' heirs on October 8, 1974, and it wished to consolidate all interests in the lot by purchase of the reserved mineral interest.

On November 18, 1980, BLM issued its decision rejecting this application, holding that the United States no longer owns the mineral rights in question. BLM explained that, while the original deed to Banks in 1943 had reserved a partial mineral interest to the United States, USDA's records indicated that the Secretary of Agriculture later sold this interest to Banks on January 23, 1953, under the Act of September 6, 1950, 64 Stat. 769. Accordingly, BLM held that it does not have jurisdiction over these mineral interests, as they are not Federally owned, and rejected the application. Watkins (appellant) appealed this decision.

[1] The record contains a copy of a page of the register listing sales of reserved mineral interests by the Farmers Home Administration of USDA under the Georgia Farm Tenant Security Project. This page shows that a Government-owned 75 percent reserved mineral interest in the 78.5-acre parcel in Butts County, Georgia, was sold to Walter Banks by USDA on January 23, 1953. This transaction clearly included the same interests for which appellant applied.

BLM's authority to sell interests under section 209 of FLPMA, supra, is limited to mineral interests "owned by the United States where the surface is or will be in non-Federal ownership." 43 U.S.C. § 1719(b)(1) (1976).

Appellant asserts that no deed conveying these interests was ever issued to Banks. The fact that appellant has not been able to locate such a deed, of course, does not mean that none was issued in 1953 by USDA. In the absence of any proof to the contrary, we presume that the sale of these interests was regularly consummated by the issuance by USDA of a deed or other appropriate instrument of conveyance passing title to these mineral interests to Banks. A presumption of regularity supports the official acts of public officers and, in the absence of clear evidence to the contrary, courts presume that they have properly discharged their official duties. United States v. Chemical Foundation, 272, U.S. 1, 15-16 (1926).

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

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Edward W. Stuebing  
Administrative Judge

We concur:

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James L. Burski  
Administrative Judge

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Gail M. Frazier  
Administrative Judge

